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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROBERT DANIEL PERRY,

12 Plaintiff,

13 vs.

14 GLORIA GARCIA, et al.,

15 Defendants.

CASE NO. 09cv0622-LAB (RBB)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

16 Robert Perry is a California prisoner currently incarcerated at Folsom State Prison.
17 The essence of this case, which he brings as a civil rights lawsuit under 42 U.S.C. § 1983,
18 is that Defendants subjected him to extensive physical, verbal, and psychological abuse at
19 Richard J. Donovan Correctional Facility, where Perry was previously incarcerated — all the
20 while ignoring his repeated and urgent pleas for emergency dental care.

21 Perry filed this lawsuit on March 25, 2009, and pursuant to 28 U.S.C. § 636 and Civil
22 Local Rule 72.1 it was referred to Magistrate Judge Ruben Brooks for a Report and
23 Recommendation (“R&R”). Defendants filed a motion to dismiss on February 16, 2010,
24 Perry opposed it on March 10, 2010, and on July 16, 2010 Judge Brooks issued his R&R.
25 The R&R recommends granting Defendants’ motion to dismiss almost in full. More
26 specifically, it recommends dismissing most of Perry’s claims, some with prejudice and some
27 without.

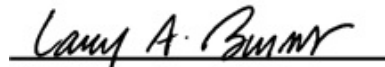
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1 The R&R informed the parties that they could file objections to it, but neither party
2 has. As far as Perry is concerned, this is of grave consequence. Not only does Perry's
3 failure to oppose the R&R lessen the Court's obligation to review Judge Brooks's findings,
4 *see United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), but as the
5 R&R concludes, "The parties are advised that failure to file objections within the specified
6 time may waive the right to appeal the district court's order."

7 The Court has reviewed the R&R and finds that it does a commendable job of
8 articulating the relevant legal standards and surveying the factual terrain pertinent to Perry's
9 claims. It therefore **ADOPTS** the conclusions of the R&R in full. Perry failed to exhaust his
10 claims alleging inadequate dental care; those claims are dismissed without prejudice and
11 with leave to amend. Perry's other claims, however, are dismissed with prejudice and
12 without leave to amend. These include: (1) his claims alleging conspiracy, attempted
13 murder, a violent hate crime, and cruel and unusual punishment; (2) his claims for monetary
14 damages against Defendants in their official capacities; and (3) his supplemental state law
15 claim alleging the confiscation of personal property. Defendants' request to strike the
16 allegations of murder and hate crime, along with their motion to strike Perry's claim for
17 injunctive relief, is denied.

18
19 **IT IS SO ORDERED.**

20 DATED: September 10, 2010

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22 **HONORABLE LARRY ALAN BURNS**
23 United States District Judge